

**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

August 23, 2013

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, August 23, 2013. Members present were Chairman Barry Stumbo, Noel White, Joseph Smith, Janice Meyer, James Griggs, Thomas Glover, and Kathryn Moore. Others present were Chuck Saylor, Division of Engineering; Jeff Neal, Division of Traffic Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones, Department of Law. Staff members in attendance were, Bill Sallee, Jimmy Emmons and Tammye McMullen.

**Swearing of Witnesses** – Prior to sounding the agenda, the Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the June 28, 2013 and the July 26, 2013 meetings will be considered at this time.

**Note** - Ms. Moore advised that she had left the meeting before the long discussion in Part B, and asked if could this be corrected. She noted she was here for the vote, but not the subsequent discussion.

**Action** – A motion was made by Ms. White, seconded by Ms. Moore, and carried unanimously to approve the minutes of the June 28, 2013 meeting with one correction.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
2. **No Discussion Items** - The Chair asked if there were any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

**Action** – A motion was made by Ms. Meyer, seconded by Mr. Smith, and carried unanimously to approve the minutes of the July 26, 2013 meeting.

- a. **V-2013-50: CHARLES POPE** - requests two variances: 1) to reduce the required front yard from 50 feet to 26 feet; and 2) to reduce the required side yard on the northwest side of the property from 25 feet to 0 feet in order to construct a carport and a covered porch in the Agricultural Rural (A-R) zone, at 290 Carterbrook Lane (Council District 12).

**The Staff Recommends: Approval**, for the following reasons:

- a. Granting the requested variances will not adversely affect the subject or surrounding properties; nor will it affect the public health, safety, or welfare. It will not alter the character of the vicinity or cause a nuisance to the public, since most other properties are located at similar setbacks from the right-of-way. The side yard variance will be mitigated by the location of the fence about 10' from the property line, which will ensure that there will be room for the farm owner to maintain the fence.
- b. Granting these variances will not allow an unreasonable circumvention of the Zoning Ordinance since the building additions will be no closer to the road than the existing structure. The regulations from which the applicant seeks relief were intended for lots of 40 acres or more. The small 1/2-acre size of this lot in an existing rural residential area constitutes a unique situation.
- c. Strict adherence to the Zoning Ordinance would constitute a hardship to the applicant, as this structure would essentially be prohibited from a rather ordinary expansion. The applicant is prevented from making a significant addition to the rear of the structure because of the existing septic system on the property.
- d. The requested variances are not the result of a willful violation of the Zoning Ordinance, as the subject property was developed prior to the adoption of the current Zoning Ordinance.
- e. The variance is not a result of the applicant's actions, as the building has not been constructed, or even started. The need for the requested variances was recognized during the normal course of obtaining the necessary permits for the proposed additions.

**This recommendation of approval is made subject to the following conditions:**

1. That the property be developed in accordance with the submitted site plan and application.
2. That a building permit be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. Charles Pope, appellant, was present. After reviewing the recommended conditions, he said that he agreed to abide by them.

Staff Discussion -

Mr. Griggs asked staff if they are averaging the side yard, and the applicant can build the structure that he would like with the average side yard at 3 feet, why the variance would not be to 3 feet instead of 0 feet. Mr. Emmons replied that in this particular case, because it was going to 0 feet, the measuring was not exact; and staff was using that appropriate average for review and as a part of the justification for granting the requested variance. He said that he did not think there would be any negative consequences if it were done to 3 feet; however, staff's review of this did not get into the fractions of a foot.

Mr. Griggs asked if this variance to 0 feet be along that entire property line, all the way to the back fence, by several hundred feet. Mr. Emmons advised, that the first condition; that the property be developed in accordance with the submitted site plan and application would prevent that, and the proponent's garage is not parallel to the line it really comes to a point and touches the property line. The variance, if granted today, would not grant a carte blanche for the applicant to build a wall along the 0-foot setback line. Mr. Griggs then asked that, even though the variance is on that side of the property at 0-feet if the applicant couldn't build anything other than what is submitted on the site plan. Mr. Emmons replied that would be staff's position; and if they wanted to do something different other than what was submitted today, it would have to come back to Board of Adjustment for further review.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. White, seconded by Mr. Glover, and carried unanimously to approve **V-2013-50: CHARLES POPE** – a request for two variances: 1) to reduce the required front yard from 50 feet to 26 feet; and 2) to reduce the required side yard on the northwest side of the property from 25 feet to 0 feet in order to construct a carport and a covered porch in the Agricultural Rural (A-R) zone, at 290 Carterbrook Lane (Council District 12), as recommended by staff and subject to the two conditions.

- b. **C-2013-49: YMCA OF CENTRAL KENTUCKY** - requests a conditional use permit to operate an after-school program for up to 48 students in an existing church in a Single Family Residential (R-1D) zone, at 2185 Garden Springs Drive (Council District 11).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the YMCA proposes to utilize the existing building and parking area to serve the requested after-school program (child care facility) which is located near the center of this 4.9-acre site additionally buffered by a public school and public park on two sides.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The use shall be conducted in accordance with the submitted application and a revised site plan that removes the park property owned by the LFUCG; and identifies the existing site conditions for the church, including the off-street parking, building dimensions, and square footage of the existing outdoor play area.
2. All necessary permits, including a final Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection within 30 days of approval by the Board of Adjustment. The Zoning Compliance Permit is not to be issued until a revised site plan is received in the Division of Planning office.
3. The existing parking lot, screening, and storm water management plan shall continue to be implemented in accordance with the requirements of the Zoning Ordinance and Engineering Manuals.

Note - Mr. Emmons informed the Board that the required notice for all of the applications on today's agenda including the signage; had been posted. Mr. Emmons also advised that, with this particular case, he had received one letter of opposition for the YMCA that he then presented to the Board.

Representation – Ms. Kelly Estin was present representing the appellant, and she indicated that she had reviewed the recommended conditions and agreed to abide by them.

Staff Discussion - Chairman Stumbo said, in reference to the letter of opposition, that it appears the concern is that there is going to be an additional building built, and verified that this is not the case. Mr. Emmons, explained that when the required notice letters went out for this particular application, it created a large amount of confusion with the neighborhood, because the applicant utilized the last approved site plan for this particular piece of property. That plan showed a new building and new parking lot that have never been built. (Requested by a previous applicant). He also stated that the applicant is not going to be building any new buildings or new parking lots; and, in fact, the land is now a part of a LFUCG park. The applicant is going to be utilizing the existing Church, with the existing parking lot, and they are going to be running an after-school program. He stated this is not a typical YMCA (with a pool or anything like that); this is simply an after-school program within the existing facilities. Mr. Emmons stated that once the staff realized there was initial confusion, they did their best to work with the neighborhood association and council members to get the correct information to the public. He stated

in order to clarify the situation, staff did address this in condition #1, of the three conditions that, should the Board approve this; a new site plan will be submitted to the Division of Planning that identifies the existing site conditions for the Church. This would make the site plan match the request at hand. He noted that that way there will be a clean site plan for the record.

Since there were no questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. Moore, seconded by Mr. Glover, and carried unanimously to approve **C-2013-49: YMCA OF CENTRAL KENTUCKY** - request for a conditional use permit to operate an after-school program for up to 48 students in an existing church in a Single Family Residential (R-1D) zone, at 2185 Garden Springs Drive (Council District 11), for the reasons provided by staff, and subject to the three conditions.

- c. **AV-2013-45: STEVEN FOUNT HOUSE** - requests an administrative review to allow an increase in the allowable size of an accessory garage/barn from 949 square feet to 2,304 square feet (2,368 total square feet of accessory buildings); and a variance to increase the allowable height of a front yard fence from 4 feet to 5 feet in a Single Family Residential (R-1B) zone, at 229 Eastin Road (Council District 6).

The Staff Recommends: Approval of the requested administrative review, for the following reasons:

- a. Granting the requested administrative review should not adversely affect the subject or surrounding properties. The proposed barn will not alter the character of the vicinity or cause a nuisance to the public, since this property is a very large lot consisting of 2.56 acres, and the sum total of accessory structures will be less than the total calculated floor area of the principal residential structure. Additionally, this barn will not overpower this lot and will be similar to the one approved by the Board on the adjacent property in 1998.
- b. Strict adherence to the Zoning Ordinance would necessitate that the applicant build a much smaller accessory structure than proposed, and will not allow the necessary room he needs to store his personal property, which includes several vehicles and larger equipment needed to maintain his 2.56 acre property, much of which is wooded.
- c. The accessory structures will not be used for any commercial use.

The Staff Recommends: Approval of the requested fence height variance, for the following reasons:

- a. Granting the requested variance will not adversely affect the subject or surrounding properties; nor will it affect the public health, safety, or welfare; and because the fence height variance will allow the extension of an existing agricultural style fence, which will not be out of character for this property or the surrounding neighborhood.
- b. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance since the requested variance will allow the property owner to extend the existing fence and complete the fencing of the property in an orderly manner.
- c. The subject property was platted and developed prior to the adoption of the current Zoning Ordinance, particularly Article 15-4(b), which now limits the height of fences in the front yard of residential zones.
- d. Strict adherence to the Zoning Ordinance would necessitate that the applicant build a shorter fence, which will not be the same height as the existing fence. Furthermore, the applicant contends a shorter fence will not discourage thefts and that the proposed fencing is necessary as it will allow him to better secure his property.
- e. The requested variance is not the result of a willful violation of the Zoning Ordinance. The applicant was in the process of pursuing the necessary permits to construct the proposed barn and fencing, when the need for Board of Adjustment action was determined.

This recommendation of approval is made subject to the following conditions:

1. That this property shall be developed in accordance with the submitted site plan and application, noting specifically that the sum total of the three accessory buildings cannot exceed the total calculated square footage of the principal residence.
2. That all applicable permits including a Building Permit for the barn and fencing permit be obtained from the Division of Building Inspection prior to construction.
3. No additional accessory structures shall be erected on this property.
4. There shall be no commercial use of the subject property.

Representation – Mr. Steve House, appellant, was present, and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Since there were no questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. Meyer, seconded by Ms. White, and carried unanimously to approve **AV-2013-45: STEVEN FOUNT HOUSE** –an administrative review to allow an increase in the allowable size of an accessory garage/barn from 949 square feet to 2,304 square feet (2,368 total square feet of accessory buildings); and a variance to increase the allowable height of a front yard fence from 4 feet to 5 feet in a Single Family Residential (R-1B) zone, at 229 Eastin Road (Council District 6), as recommended by staff and subject to the four conditions

- d. **AC-2013-46: MARY BETH THOMPSON** - requests an administrative review to determine if individualized Pilates training should be allowed as a home occupation; if determined it should be allowed, a conditional use permit to offer one-on-one Pilates training in a Single Family Residential (R-1D) zone, at 902 Charwood Drive (Council District 12).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested administrative appeal and the requested conditional use permit should not adversely affect the subject or surrounding properties. This proposed home occupation for individualized personal training is similar in scale and nature to allowable uses such as educational tutoring or individual music instruction; thus, it meets the requirements stated in Article 1-11 of the Zoning Ordinance.
- b. Adequate parking is available for this use in the driveway of this home, or on street should the need arise. No disturbances to surrounding property owners are anticipated with this conditional use.
- c. All necessary public facilities and services are available and adequate for the proposed home occupation use.

This recommendation of approval is made subject to the following conditions:

1. This conditional use shall be operated in accordance with the submitted application and site plan.
2. All necessary permits, including issuance of a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to commencement of the home occupation use.
3. The activity shall at all times comply with the provisions of Article 1-11 of the Zoning Ordinance pertaining to home occupations.
4. This conditional use shall become null and void should the appellant no longer reside at this location.

Note - Mr. Emmons presented two letters of opposition to the Board.

Representation – Ms. Mary Beth Thompson, appellant, was present. She indicated that she had reviewed the recommended conditions and agreed to abide by them.

Staff Discussion - Ms. Meyer asked Ms. Thompson if she had room in her driveway to park a car. Ms. Thompson responded affirmatively.

Chairman Stumbo said to staff that one of the letters states that the deed restriction for this subdivision says all property shall be use for single family residential purposes only. Mr. Emmons replied that both the Zoning Ordinance and the Subdivision Regulations state that the Urban County Government does not enforce deed restrictions. He also stated that deed restrictions were not considered in the review of this application. He noted that he could neither confirm nor deny whether the deed restrictions do indeed have a restriction against home occupations. He said that, from staff's perspective, the home occupation is an allowable conditional use if the Board approves it. Mr. Glover asked if the Zoning Ordinance supersedes deed restrictions. Mr. Sallee replied that he wasn't sure it would supersede the deed restriction. The particular use of this property (the principal use) would clearly be the dwelling that's on the property. Home occupations are not accessory because they do require conditional use permits from the Board. He stated they are meant to be incidental to the point where they don't disrupt the neighborhood, and that is confirmed by the fact that there are so many conditions for a home occupation. Mr. Sallee also noted that in addition, there is a pretty severe square footage restriction for all home occupations they cannot exceed 300 square feet; therefore, they are very much meant to not be a use that will alter the character of a neighborhood.

Ms. Moore then asked if the Legal Staff wanted to comment on this. Ms. Jones responded that deed restrictions are private between a neighborhood and the people that live there. This would be a private matter, and staff would not intervene in this matter. Mr. Glover asked if this application were granted, if a law suit to enforce the deed restrictions use the granting of the conditional use as evidence against the restriction of the deed. Ms. Jones replied they could if they wanted to, but that would up to the attorneys for the homeowner's association and the individuals; but for obvious reasons, staff does not get involved with that, because staff does not have any authority over private deed restrictions. Mr. Glover then asked Ms. Thompson if she was aware of the deed restriction. Ms. Thompson replied no. Mr. Glover then explained to Ms. Thompson, if the allegation in the letter is true, that there are deed restrictions on the property that say she cannot use the property for anything other than single-family residential purposes, (which is stated in the letter as so); if this is true, if the Board granted permission for the request, it is only permission from the Board of Adjustment for what is being proposed to do, and it doesn't insulate her from the consequences of breaching any restrictions on the deed.

Mr. Griggs recommended that, if granted approval, she should attend a home owner's association meeting and raise the question and get permission from the Board before opening her business.

Action – A motion was made by Mr. Griggs, seconded by Ms. White, and carried 6-1 (Smith opposed) to approve **AC-2013-46: MARY BETH THOMPSON** - an administrative review to determine if Pilates is an allowable home occupation, and a conditional use to permit one-on-one Pilates training in a Single Family Residential (R-1D) zone, at 902 Charwood Drive (Council District 12), for the reasons provided by staff, and subject to the four conditions.

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential

character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

#### D. **Conditional Use Appeals**

1. **C-2013-48: YMCA OF CENTRAL KENTUCKY** - requests a conditional use permit to operate an after-school program for up to 48 students in an existing church in the Agricultural Rural (A-R) zone, at 4131 Todds Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the YMCA proposes to utilize the existing building and parking area to serve the after-school program (child care facility), which is located near the center of this 9.6-acre site.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The use shall be conducted in accordance with the submitted application and a revised site plan that removes the "future parking" and "future structures" notations in the site statistics and [adds] an outdoor fenced and screened play area that is no smaller than 25 square feet per child
2. All necessary permits, including a final Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection within 60 days of approval by the Board of Adjustment. The revised site plan must be submitted to the Division of Planning prior to the issuance of a Zoning Compliance Permit.
3. Prior to issuance of the final Zoning Compliance Permit, the required outdoor play area shall be installed.
4. Any pole lighting for the parking lot shall be of a shoebox design, with light shielded and directed downward, to avoid disturbing any nearby properties.
5. The existing parking lot, screening, and storm water management plan shall continue to be implemented in accordance with the requirements of the Zoning Ordinance and Engineering Manuals.
6. Any new street access due to the connection of Polo Club Boulevard to Todds Road shall be designed to safely accommodate both the church and child care activities, subject to approval by the Division of Traffic Engineering.

Representation – Ms. Kelly Estin was present representing the appellant. She indicated that she had reviewed the recommended conditions and agreed to abide by them.

Ms. Meyer asked staff if the intent of condition #1 is to include an outdoor fenced and screened play area. Mr. Emmons explained the missing word in condition one and presented this on the overhead projector.

Mr. Glover asked Ms. Estin if she understood what was being asked. Ms. Estin responded affirmatively.

Opposition – Everett Taylor, who lives at 4133 Todds Road, advised that his property lies along side the property. He stated that he has requested that the Church run a 4-board plank fence down the property line for about 250 feet of the almost 1,000 feet along his driveway, which he believes is a safety issue. Mr. Taylor said the reason he is requesting this is to keep children from running over into his driveway and cars from driving over into his driveway. He stated that his driveway sits about 20 feet off the Church's property line. He said that the Church has basketball goals, and children play out in that area, noting that children are not going to stay in that self-contained area. He stated they are not in an area like that now, there is a lot of activity there; and it is growing. Mr. Taylor said that he is deed-restricted to a 4-board plank fence for aesthetic reasons.

Mr. Taylor said that he attends the Church across the street from his home, which is lined with the same type of fencing, and he has talked with the Pastor of this Church about the issue with the dumpster. Mr. Taylor stated that everybody from the neighborhood(s) fill the dumpster, and it looks real bad. He added that it is right against his property line. He said they told him that it was being resolved by trying to get rid of the dumpster.

Mr. Taylor presented a photo of the area at this time, which showed the dumpster, noting that this is not a contained area, and it probably should be. He said that at his church, they have a self-contained area that is built up and cannot even be seen. He stated this church has had a lot of activity, as far as children coming from that church lot onto his driveway, and they have had to actually call the police a couple of times where children would sit down in the driveway and not get up. He stated that his wife would be coming down the driveway and would have to stop, turn around and back up, and come tell him. He would then call the police and have them come out, and they made the kids move. He again stated that he is not asking them at this time to run a fence all the way down the property line. He is just asking

for about 200-250 feet of fence, to keep the activity from the church from coming over there.

Mr. Stumbo asked Mr. Taylor if what he is asking is for them to require the applicant build 200-250 feet of fence, 4-plank along the property line. Mr. Taylor responded affirmatively. He stated again that the parking lot has basketball goals there, and he knows children will be chasing balls. They are going to be coming across his driveway and the last thing they want to do is run over a child. He stated that this is really a safety issue that they run something down through there. He noted that the church is growing, and it is going to get even larger; and if there are anywhere from 50-400 different cars coming in there besides what they have now; and children are coming and going all the time, there is nothing to separate their property line.

Mr. Glover asked staff if this came up during the review of this application. Mr. Emmons replied that this issue had not been discussed.

Chairman Stumbo then asked Ms. Estin to come back up to the podium at this time, and asked her if she would consider building a fence along the property line to protect any spillage of kids going across the driveway. Ms. Estin advised this was an issue that was only brought up at this meeting and has not been considered. She noted this is not a decision that she can make for the YMCA at this time. She noted that this would probably be cost prohibitive with regard to running the program. Ms. Estin noted that she did explain that the program they are trying to offer will be a licensed child care program, so there would be rules and regulations that they are required to follow, one being the safety and supervision of children. This requires all children to be within their sight and sound at all times, and there have to be established barriers, even if they are not within the fenced outdoor play area. If they were in green space, or playing basketball, it would still be their responsibility to establish boundaries and ensure that they were enforced. She stated that she does know that children don't always stay where you tell them to be; but part of their responsibility is ensuring that they have an appropriate staff-to-child supervision ratio. The rules are very clear and they establish boundaries, whether it be a fence, cones, or some type of barrier, to ensure the safety of children at all times.

Todd Nelson, Campus Pastor at Andover, said that he had spoken with Mr. Taylor, nothing that they all share his concern. He noted there are two issues going on: there's the safety of the children, who are going to be under the YMCA supervision, and also general traffic on the property. He said that, in speaking with Mr. Taylor, he advised him that he is happy to listen to his concern, and wants to work with him with in order to get something they both can live with; but they can't make any commitments, because they have no idea what this sort of thing would cost. He stated that if the cost would be too much, they would basically have to come back to the YMCA and say they really can't do this. He noted that this is something they want to do as a benefit, as there is a need for after-school care, and they wanted to open their doors. Mr. Nelson stated they are not getting anything in from the YMCA in terms of rent or anything else. He stated that this is purely a ministry that they are doing. He said that if they had to step up and do a \$15,000 fence, they would have to say they could not do this program; and they have seen this as one of the greatest needs (after-school care), and they are hoping to meet that.

Mr. Griggs stated that Mr. Taylor had said that his covenants require him to have a 4 plank fence, and asked Mr. Nelson if he was required to do the same. Mr. Nelson responded that Mr. Taylor and he had discussed this and decided that they wouldn't want to do anything that would create any sort of issues for Mr. Taylor. He said that, they both had chain-link fences before; and both agreed that is not what they wanted in that community. Mr. Griggs noted that they were talking child safety on one hand, and then they were talking about aesthetics on the other. He thought that with a 3-foot chain-link fence, if it saves a child's life, than aesthetics shouldn't be the issue.

Ms. Meyer asked staff if there are requirements in this zone for some sort of but the properties are zoned the same, so there is no property zone-to-zone screening required.

Mr. Griggs asked Mr. Nelson if there is some comment he would like to make about the trash around the dumpster. Mr. Nelson said that it is awful, and evidently it has become widely known that it is the place to come and dump. He noted that trash wasn't even in the dumpster. Mr. Nelson said that it was up and down Todd's Road, and they spent about \$250 removing it. He stated that they had Republic come out to the property. He also noted that they would love to work with Republic because they do not need a dumpster, they need herbies. They have told them they were unable to help them with that; once a dumpster is there, it can't be replaced with herbies. Mr. Griggs asked if the dumpster was close to their building, and if people are coming up onto the property and abusing this dumpster. Mr. Nelson responded yes. Mr. Griggs stated that maybe there needs to be a fence around it.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Mr. Glover, seconded by Mr. Griggs, and carried unanimously to approve **C-2013-48: YMCA OF CENTRAL KENTUCKY** - a conditional use permit to operate an after-school program for up to 48 students in an existing church in the Agricultural Rural (A-R) zone, at 4131 Todds Road (Council District 12), for the reasons provided by the staff, subject to the six conditions.

2. **CV-2013-47: TRAIL BLAZER** - requests a conditional use permit to construct a tent for auto detailing, to be left on site for more than 60 days; and a variance to reduce the required front setback from 20 feet to 0 feet to allow the tent in a Highway

Service Business (B-3) zone, at 2015 Family Circle (aka 1098 East New Circle Road) (Council District 5).

The Staff Recommends: **Approval of the requested conditional use permit**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. All of the immediately adjoining properties are zoned for commercial uses, and it is not uncommon for them to have similar temporary structures for various reasons.
- b. The location of the temporary structure is appropriate, subject to the granting of a dimensional variance as recommended.
- c. No public facilities, such as utilities, are required for this use.

The Staff Recommends: **Approval of the requested variance**, for the following reasons:

- a. Granting the requested variance will not adversely affect the subject or surrounding properties; nor will it affect the public health, safety, or welfare. It will not alter the character of the vicinity or cause a nuisance to the public, since the tent will be not be in the required sight triangle. Furthermore, the existing tent, which was legally placed with a temporary Certificate of Occupancy, has not proven to be a nuisance or out of character with the surrounding area.
- b. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance since it is typical for businesses to place temporary structures (tents) on their properties for grand openings or sidewalk sales. The placement of this particular tent is mitigated by the very tall hedge that is in place on the adjoining property as well as the wide grass utility strip between the property and the adjacent turning lane of New Circle Road to Family Circle.
- c. Strict adherence to the Zoning Ordinance would constitute a hardship to the appellant, as alternate placements of the tent and detailing operation would create a hindrance to and a nuisance for the existing operation of this established business and their customers.
- d. The requested variance is not the result of a willful violation of the Zoning Ordinance, as the business obtained the appropriate permits for the placement of the temporary structure for the first 60 days, and is now requesting approval for up to 180 days. The location of the tent is dictated by the current configuration of the site which has been developed for decades.
- e. The variance is not a result of the applicant's actions, but rather a result of the pursuance of the appropriate permits for the temporary structure.

This recommendation of approval is made subject to the following conditions:

1. That the property be developed in accordance with the submitted site plan and application.
2. That a zoning compliance permit and a building permit be obtained from the Divisions of Planning and Building Inspection prior to construction.

Representation – Mr. Barry Sanders and Mr. Fred Price, appellants, were present. They indicated that they had reviewed the recommended conditions and agreed to abide by them.

Chairman Stumbo asked the Board if there were any questions. There were none.

Note - Mr. Emmons advised that staff had received one correspondence that was presented at the beginning of this hearing, which is in reference to the opposition present.

Opposition – Ron Turner, with Turner Development, owns the property next to Trail Blazers, currently occupied by Safe Lite Auto Glass, but formerly his office facility. Mr. Turner advised that he has a lot of interest in this area and is seeking other pieces of property throughout New Circle Road area. Mr. Turner said that he is opposing the setback from 20 to 0 feet because he has been working for several years to clean up this quarter of New Circle Road. He stated they have been working really hard to get the cars and herbies (trash containers) set back off the road. He noted that if you go back up by PDQ and across from Trail Blazers, they park their cars almost on the road. Mr. Turner introduced his son-in-law, Jason Widmer, and related that Mr. Widmer sold the tent to Mr. Sanders several months ago. He stated that Mr. Widmer erected a tent on Winchester Road at a car wash called Auto Spa. He went on to state that Mr. Widmer was asked by the City to remove the tent due to it being unsightly and because of the set-back, and he purchased. Mr. Turner said once again that he is opposing this because, if the tent is allowed to be there permanently within the required setback, it breaks everything he has tried to accomplish for the city of Lexington. He stated that if this setback is approved, it would create a precedent for other people to come before the Board and use this as an example. When he spoke with Mr. Sanders and his workman outside of the Council Chambers, prior to this meeting, Mr. Sanders said that if Mr. Turner wanted to oppose this, he would remove the tent in October 2013, and never erect it in the same location again. Mr. Turner stated that this is acceptable to him.

Mr. Turner also expressed concern that in the tent car washing chemicals, with nowhere for the runoff to go other than the sanitary sewer. He stated that Mr. Sanders' car wash goes into a filter and then into the proper area. He also noted, when washing cars and treating them with chemicals under the tent, it washes off and goes into the ravine right down through New Circle Road.

Mr. Turner presented an opposition petition, signed by several people in the surrounding area,

Mr. Turner said that they understand he has a business there, a good business; but to have a tent out there would set a precedent for everyone else to do it. He noted that if they had proper sewage and proper disposal of their chemicals, it

may be alright. He noted that there is a building set-back line; and although it is a temporary tent, when sides are put up, it becomes a more unsightly item. Mr. Turner said that his son-in-law, Jason, was asked to remove the tent. He did and then sold it to Mr. Sanders.

Mr. Turner reminded the Board that he has done a lot for the city of Lexington. He has just finished the building located on Winchester and New Circle Road, which is the "Gateway Building," and has put millions of dollars into it by putting high tech people in that area. He stated that he does not have a problem if Trail Blazers wants to leave the tent up through October, as long as the tent does not go up on New Circle Road again, and if they can stay behind their building line. Mr. Turner noted that he had asked them if there was anywhere else they could put this tent. He said that Mr. Sanders told him that he was going to talk to Harlan Lennox, who owns the property adjacent to behind Trail Blazers; and maybe they could put the tent there for detailing or cleaning cars. Mr. Turner stated again that, he has no problem with the tent staying up for two more months, with the clear understanding that he and Mr. Sanders agreed upon, that the tent would not remain there after October of 2013. Mr. Turner advised that they are three weeks past the deadline to take the tent down. Mr. Turner asked that with the set-back, the Board keep in mind what is going to be happening in years to come. Mr. Turner noted that he is going to work very hard with the Mayor and the Council to try and clean up New Circle Road. He stated that he has been blessed with a wonderful business, Amtech of Kentucky, Turner Development, and the Landsdowne Club, and he just feels like this request would hinder people's future, as far as business is concerned.

At this time, Mr. Turner presented pictures of the area for review. Mr. Turner then indicated that where Trail Blazers is located, where the tent is located and, the Safe Lite Property that he owns. He noted that it is written that the tent cannot take up any additional parking and must be approved by the Fire Marshall. Mr. Turner said that it is his understanding that they have a permit from the Fire Marshall for the non-flammable tent. He stated that if you do pull out of the lot, you can pull out far enough where it doesn't block traffic because all traffic is ongoing in that location.

Chairman Stumbo asked if the Board had any questions at this time.

Mr. Glover asked Mr. Turner if his understanding was correct that they sold Mr. Sanders the tent. Mr. Widmer responded that he sold the tent to Trail Blazers several months ago; not really knowing who Mr. Sanders was at the time. He advised that when this came up, Mr. Turner asked him if he wasn't asked to take the tent down. He then told Mr. Turner that he did have to take it down and showed Mr. Turner the letter. He noted that Mr. Turner also asked him if he was opposed to taking the tent down. Mr. Widmer said that he wasn't because in the winter when they used the tent, they put sides on it, and it was unsightly. He said that it is one thing to rent a tent and pop it up for 30 days, but it is hard to keep it clean when it stays up all year round. He also stated that he knew exactly what Mr. Turner was talking about; because if he were a next door tenant and there was a tent with these sides, the tent can get tattered and torn and it doesn't look good. Mr. Widmer stated he understands Mr. Turner's point; and as far as detailing cars, it doesn't matter that is not the issue. He stated that his concern is that people would think if one can get it approved, then they should be able to get theirs approved as well (to put up tents permanently), because they can be utilized inexpensively; but after a while they become an eyesore.

At this time Chairman Stumbo, asked Mr. Sanders if he wished to respond to Mr. Turner's comments.

Mr. Sanders said that they erected the tent, and he had originally contacted Mr. Widmer about the purchase of it. Mr. Sanders noted, to clarify the record, that they do not wash cars under the tent; they detail cars. He said that the car out automobiles, use a carpet extractor that contains water, detail the cars with waxes and chemicals that stay on rags, and polish cars with buffers. He also said that occasionally they do tint a window or two out front, and they have put product out front for occasional sale. He stated that they do not park the cars outside of the parking lot perimeter; there is an asphalt area on which they park the cars. Mr. Sanders also stated, that like some merchants, occasionally they utilize a grass area in front where they will demo a particular car that they have a manufacturer bring in, or a customer may want to bring their car that has just has a lot of work done, and will exhibit it out there.

Mr. Sanders stated that they would like to keep the tent and use it on a regular basis within the zoning laws. He noted that they are asking for that specific space, because if they move it any further back, it actually sides itself back past the hedges. He noted that there are hedges behind the tent, between the two buildings, and you cannot see very much of the tent coming from the other direction, from the parking lot. He said that coming from a certain direction, you would lose no more visibility coming from Safe Lite Auto Glass than you do if there were no tent there, because the hedges are way higher than anybody driving in an automobile, even in a semi-truck. He added that, before the tent was erected, there were a pallet racking system outside that had camper tops of hard, fiberglass shelves that are usually put on the back of a pick-up truck. They were displayed out there and had been out there for at least fifteen to eighteen years, and no one ever complained about them or asked them to be taken down. Mr. Sanders noted that the tent actually takes up less space than the previous pallet racks. He noted that they do not have sides on them and the tent is clean.

Mr. Sanders stated that he has agreed that they would take the tent down because he did not want to cause any hardship to Mr. Turner.

Mr. Price added that they will not be putting any sides on the tent or detailing any cars under it during the winter months.

Chairman Stumbo asked staff if the original permit for the 60 days goes through the Board of Adjustment or someone else. Mr. Emmons responded that the Planning staff is enabled by the Zoning Ordinance to approve temporary structures for up



to 60 days. He noted that staff did issue a Zoning Compliance Permit and a Certificate of Occupancy for the tent. He stated this was issued with start date of May 28, 2013 and would go for 60 days.

Chairman Stumbo asked staff what would be the situation if they took the tent down and applied the next week for another 60 days. Mr. Emmons replied that the total number of days are within a calendar year. Chairman Stumbo asked if this was 60 days per year and anything over 60 days would have to go to the Board. Mr. Emmons replied Board action is required for 61 days up to 180 days. Mr. Sallee then stated that the reason for the 180 days is related to the Kentucky Building Code, which limits the erection of a temporary structure to only that period of time. He indicated that there were a couple of situations where temporary structures went up, stayed almost 6 months, and came down for a very short period of time, and then were re-erected. He stated that the current text of this zoning requirement was approved to prohibit that in the future.

Ms. Moore then asked for clarification that there are two issues in this situation. She stated that there is one issue that they are entitled to the tent for 60 days, which that they need the permit for 180 days, and after that it is not allowed for a full year; the second issue is the location, which is the setback. She asked even if this were approved the length of time, if they would still have to approve the setback as a separate issue. Ms. Moore then said that, to her understanding the neighbors are objecting to the tent and its location, the length of time the tent is there at that location; and asked if it was just the tent. Mr. Widmer responded that it is not an objection to the length of time. He stated if they would just put it up for the 60 days as requested, that would not be an issue. He said that the issue is to have an unlimited time and to have the setback changed from 20 feet to 0 feet.

Mr. Turner said that the tent sits out past the sign, and signs have to be to set back so far; the tent sits out in front of the sign. He also noted that the water drainage from the tent comes off the blacktop and over into the street's retention system.

Chairman Stumbo asked if the Board had any questions at this time.

Mr. Glover asked Mr. Sanders why he needed the tent, and if it is to keep the rain off the cars that have been freshly detailed. Mr. Sanders replied that this would be one reason, and the other reason is that you are not supposed to detail and apply waxes in direct sunlight, so the tent is used for that purpose. He also noted that it allows the employee to not experience as hot of condition from the sun.

Mr. Glover then asked if detailing cars was part of his permanent business. Mr. Sanders responded affirmatively. Mr. Glover told Mr. Sanders that even if his application was granted that he would only get permission to use his tent for that purpose for half of a year. Mr. Sanders stated that it would be primarily for the summer season.

Ms. Meyer asked Mr. Sanders if there is any possibility of somewhere else on the property to put a carport. Mr. Sanders replied that there is another piece of property where they could put the tent. He stated that the reason they chose this location is because they have two front New Circle Road sections. He stated that if they moved it to the New Circle Road and Family Circle intersection, it would be an issue of visibility and an eyesore, regardless of the condition of the tent, and it would be out of place. He stated that the hedges were already a large obstruction therefore; they wouldn't be obstructing it any more than the hedges do. He noted that they did not put it in the grass; they kept it back from there. He stated that if they pushed it back further, it would be so close to where the cars drive around, it would prevent people from being able to get in, and could possibly restrict emergency vehicles from getting through. Mr. Sanders stated that if they put it back further towards the far side of the building, it would block the driveway; and if they moved it out onto Family Circle, they would then be outside of the setback and in the middle of the driveway. He noted that they cannot put it up against the building, as the building has too much front space façade with an awning along the front. Mr. Sanders stated that placing it in the back will obviously attract some attention. People can see what they do, and it gives them the type of exposure to let people know what they do.

Mr. Griggs asked Mr. Sanders if they do window tinting inside of the building, which is huge, and asked if he could do window tinting inside of the building if they dedicated a bay to it. Mr. Sanders replied that they will in the winter, but in the summer they are a lot more busy and have a lot going on inside. Mr. Griggs noted that Mr. Sanders biggest argument is that when the tent is outside, his customer base grows.

Mr. Griggs asked Mr. Sanders if it is correct, as the opponents indicated that he would be willing to not ever put this up again if he could have it in place until October. Mr. Sanders stated it was not his preference; but if that is what the Board thinks is the right answer, he would abide by that.

Mr. Glover asked staff if this application were to be denied, and he was given until the end of October to take it down, what their restrictions would be for next year. Mr. Sallee stated that the 60-day limit has expired; so if the Board were to deny this application, it would have to come down very soon. He noted that if the Board were to approve it, they might condition their approval on the tent not being re-erected after this year, or set some limits on its re-erection next year.

Mr. Glover then asked what would happen if the application were withdrawn. Mr. Sallee noted it would be the same. He stated they can make an application next year to re-erect the tent somewhere on the site.

Ms. Moore asked if they could have the use of the tent for 60 days next year. Mr. Sallee advised that this is correct. Ms. Moore asked if they could have 60 days at this location if they got a variance. Mr. Sallee stated without the Board's approval of a conditional use permit, the 60-day limit would apply. Ms. Moore then asked if they could get it at this location for 60 days. Mr. Sallee replied not this year. Mr. Emmons then responded that this year the 60-day limit within the calendar year has expired. He advised that next year, if the applicant were to come in and request a permit for a temporary structure for the next calendar year, the staff would be authorized to do it for 60 days. He stated that, based on the discussion today, the Staff wouldn't approve it in the same location that it is today. Mr. Emmons stated that there are two questions today: the length of time for the conditional use and the variance for the location of the tent. Mr. Glover asked if the application made to staff requesting the 60 days included the variance. Mr. Emmons replied that the location was noted on that, and staff did allow it. He stated the tent did not have any side, and technically did not take up any parking spaces. He noted that there were two parking spaces located under the tent, and it utilizes two parking spaces to get to the detail area there. He stated that staff did grant it at that location, pending their application to the Board to make a determination on whether or not it would be allowed to remain in that location.

Ms. Meyer then asked Mr. Sanders if the Board were to approve this request and condition it such that a tent cannot be erected at all at this location, what the follow up would be. She asked if the staff is giving this a 60-day permit and what kind of follow-up there will be to make sure the tent doesn't get put back up. Mr. Marx commented that it would be the standard process when it is conditioned, rather than say they can't ever put it up again, he would suggest to have a condition worded so that it says that it expires at the end of October. He said that if on November 1<sup>st</sup> the tent was still up, staff would have to go through their standard process of issuing a notice of violation. He also noted that at that point, there is a minimum of one day to correct the violation.

Ms. Moore stated that she was inclined to say no. She noted that it is hard to say it is an eyesore after October, but it's not and eyesore now. She stated that she does not see a special hardship in this case, and that the detailing can be done inside.

Mr. Glover stated that he is intrigued by the fact that the applicant has asked permission and might get not only get turned down, but he might almost lose the privilege that he had before without asking permission. Mr. Glover stated that if the Board says no, he understands that no means no forever; and if he had not asked for permission, he could have gotten 60 days every year and the Board not have known about it, and couldn't have done anything about it. He asked if he was reading this right; that the Board is going to penalize him because he came before them to ask permission. Mr. Sallee stated that if the Board were to deny the application, they would still have the ability through the allowable accessory uses in this zone to re-erect the tent for up to 60 days during the next calendar year. That would be if the Board denied the variance and conditional use permit. Mr. Glover asked if this was because of the nature of the zone. Mr. Sallee responded this is correct. He stated the conditional use permit is only for a period of time of 61 to 180 days. Mr. Glover asked if anybody could put up tent in this zone for a period of 60 days, and the Board would never know about it or hear from them, and there is nothing the Board could do about it. Mr. Sallee responded affirmatively.

Mr. Sanders asked when talking about the site, if they are talking about the location, or the entire property, and was told that it is just where it is currently located, because that is the application before the Board.

Chairman Stumbo commented that he has been to the property, and he agrees that it does take away from this area. He stated that he doesn't think he can support the variance. Mr. Sanders stated that this business at the retail location has had a 38% increase in revenue three months, out of the last six, since April. Chairman Stumbo stated he is sure it has increased their business; however, he said that he thinks there are other areas within the building or in the back of the building, where they would have the ability to do the detailing.

Mr. Glover stated that if the Board's denial of this application doesn't put Mr. Sanders in a worse condition than he would have been if had he not made the application, then he is also going to agree to deny this application.

Chairman Stumbo asked the Board if there were any other questions. There were none.

**Action** – A motion was made by Mr. Griggs, seconded by Ms. Moore, and carried unanimously to disapprove **CV-2013-47: TRAIL BLAZER** - a conditional use permit to construct a tent for auto detailing, to be left on site for more than 60 days; and a variance to reduce the required front setback from 20 feet to 0 feet to allow the tent in a Highway Service Business (B-3) zone, at 2015 Family Circle (aka 1098 East New Circle Road) (Council District 5), based on the following reasons:

1. It will cause an alteration to the essential character of the immediate general vicinity where these uses have been limited.
2. The variance does not arise from any special circumstances in the immediate facility.
3. The variance is not required to avoid any special hardship to the applicant or deprive the applicant of use of the land.

### 3. **Administrative Reviews**

None Remaining.

## IV. **BOARD ITEMS** - The Chair announced that any items a Board member wished to present will be heard at this time.

- V. **STAFF ITEMS** - The Chair announced that any items a Staff member wishes to present would be heard at this time. Mr. Sallee introduced Ms. Tammye McMullen, who has been promoted as the new Administrative Specialist to the Division of Planning, to serve the Board of Adjustment.
- VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date will be September 27, 2013.
- VII. **ADJOURNMENT** – Since there was no further business, the Chair declared the meeting adjourned at 3:11 p.m.

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Barry Stumbo, Chair

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James Griggs, Secretary